

First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

HOUSE ENROLLED ACT No. 1437

AN ACT to amend the Indiana Code concerning criminal law and corrections.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 5-2-6-3, AS AMENDED BY P.L.173-2006, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 3. The institute is established to do the following:

- (1) Evaluate state and local programs associated with:
 - (A) the prevention, detection, and solution of criminal offenses;
 - (B) law enforcement; and
 - (C) the administration of criminal and juvenile justice.
- (2) Improve and coordinate all aspects of law enforcement, juvenile justice, and criminal justice in this state.
- (3) Stimulate criminal and juvenile justice research.
- (4) Develop new methods for the prevention and reduction of crime.
- (5) Prepare applications for funds under the Omnibus Act and the Juvenile Justice Act.
- (6) Administer victim and witness assistance funds.
- (7) Administer the traffic safety functions assigned to the institute under IC 9-27-2.
- (8) Compile and analyze information and disseminate the information to persons who make criminal justice decisions in this

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(9) Serve as the criminal justice statistical analysis center for this state.

(10) Identify grants and other funds that can be used by the department of correction to carry out its responsibilities concerning sex offender registration under IC 11-8-8.

(11) Administer the application and approval process for designating an area of a consolidated or second class city as a public safety improvement area under IC 36-8-19.5.

(12) Develop and maintain a meth watch program to inform retailers and the public about illicit methamphetamine production, distribution, and use in Indiana.

(13) Develop and manage the gang crime witness protection program established by section 21 of this chapter.

(14) Identify grants and other funds that can be used to fund the gang crime witness protection program.

SECTION 2. IC 5-2-6-21 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 21. (a) The gang crime witness protection program is established.**

(b) The gang crime witness protection program shall be developed and maintained to assist witnesses of gang crimes with:

- (1) temporary living costs;**
- (2) moving expenses;**
- (3) rent;**
- (4) security deposits; and**
- (5) other appropriate expenses of relocation or transitional housing.**

(c) The institute shall develop and maintain procedures to award funds for the purposes described in subsection (b) to an individual who witnesses a gang crime.

(d) The institute shall adopt rules under IC 4-22-2 to implement this section.

(e) The director of the Indiana criminal justice institute may delay the implementation of this section until the earlier of the following:

- (1) A date set by the director.**
- (2) The date funding becomes available by a grant through the criminal justice institute or by an appropriation from the general assembly.**

If the director of the criminal justice institute delays implementation of this section, the director shall notify each

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prosecuting attorney of the director's action.

SECTION 3. IC 5-2-6-22 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 22. (a) The gang crime witness protection fund is established. The institute shall administer the fund.**

(b) The fund consists of:

- (1) money identified and obtained by the institute under subsection (d);**
- (2) appropriations made to the fund by the general assembly; and**
- (3) grants, gifts, and donations to the fund.**

(c) The institute shall use money in the fund for costs described in section 21(b) of this chapter.

(d) The institute shall identify and obtain grants and other funds that can be used to fund the gang crime witness protection program under section 21 of this chapter.

(e) Money in the gang crime witness protection fund at the end of a state fiscal year does not revert to the state general fund.

SECTION 4. IC 11-12-3.7-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 4. As used in this chapter, "forensic diversion program" means a program designed to provide an adult:**

- (1) who has a mental illness, ~~or an~~ addictive disorder, ~~or both a mental illness and an addictive disorder~~; and**
- (2) who has been charged with a crime that is not a violent offense;**

an opportunity to receive community treatment and other services addressing mental health and addiction instead of or in addition to incarceration.

SECTION 5. IC 11-12-3.7-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 7. (a) An advisory board shall develop a forensic diversion plan to provide an adult who:**

- (1) has a mental illness, ~~or an~~ addictive disorder, ~~or both a mental illness and an addictive disorder~~; and**

(2) has been charged with a crime that is not a violent crime;
an opportunity, pre-conviction or post-conviction, to receive community treatment and other services addressing mental health and addictions instead of or in addition to incarceration.

(b) The forensic diversion plan may include any combination of the following program components:

- (1) Pre-conviction diversion for adults with mental illness.**
- (2) Pre-conviction diversion for adults with addictive disorders.**

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(3) Post-conviction diversion for adults with mental illness.

(4) Post-conviction diversion for adults with addictive disorders.

(c) In developing a plan, the advisory board must consider the ability of existing programs and resources within the community, including:

(1) a drug court established under IC 12-23-14.5;

(2) a court alcohol and drug program certified under IC 12-23-14-13;

(3) treatment providers certified by the division of mental health and addiction under IC 12-23-1-6 or IC 12-21-2-3(a)(5); and

(4) other public and private agencies.

(d) Development of a forensic diversion program plan under this chapter or IC 11-12-2-3 does not require implementation of a forensic diversion program.

(e) The advisory board may:

(1) operate the program;

(2) contract with existing public or private agencies to operate one (1) or more components of the program; or

(3) take any combination of actions under subdivisions (1) or (2).

(f) Any treatment services provided under the forensic diversion program:

(1) for addictions must be provided by an entity that is certified by the division of mental health and addiction under IC 12-23-1-6; or

(2) for mental health must be provided by an entity that is:

(A) certified by the division of mental health and addiction under IC 12-21-2-3(a)(5);

(B) accredited by an accrediting body approved by the division of mental health and addiction; or

(C) licensed to provide mental health services under IC 25.

SECTION 6. IC 11-12-3.7-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 11. (a) A person is eligible to participate in a pre-conviction forensic diversion program only if the person meets the following criteria:

(1) The person has a mental illness, ~~or~~ an addictive disorder, **or both a mental illness and an addictive disorder.**

(2) The person has been charged with an offense that is:

(A) not a violent offense; and

(B) a Class A, B, or C misdemeanor, or a Class D felony that may be reduced to a Class A misdemeanor in accordance with IC 35-50-2-7.

(3) The person does not have a conviction for a violent offense in

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the previous ten (10) years.

(4) The court has determined that the person is an appropriate candidate to participate in a pre-conviction forensic diversion program.

(5) The person has been accepted into a pre-conviction forensic diversion program.

(b) Before an eligible person is permitted to participate in a pre-conviction forensic diversion program, the court shall advise the person of the following:

(1) Before the individual is permitted to participate in the program, the individual will be required to enter a guilty plea to the offense with which the individual has been charged.

(2) The court will stay entry of the judgment of conviction during the time in which the individual is successfully participating in the program. If the individual stops successfully participating in the program, or does not successfully complete the program, the court will lift its stay, enter a judgment of conviction, and sentence the individual accordingly.

(3) If the individual participates in the program, the individual may be required to remain in the program for a period not to exceed three (3) years.

(4) During treatment the individual may be confined in an institution, be released for treatment in the community, receive supervised aftercare in the community, or may be required to receive a combination of these alternatives.

(5) If the individual successfully completes the forensic diversion program, the court will waive entry of the judgment of conviction and dismiss the charges.

(6) The court shall determine, after considering a report from the forensic diversion program, whether the individual is successfully participating in or has successfully completed the program.

(c) Before an eligible person may participate in a pre-conviction forensic diversion program, the person must plead guilty to the offense with which the person is charged.

(d) Before an eligible person may be admitted to a facility under the control of the division of mental health and addiction, the individual must be committed to the facility under IC 12-26.

(e) After the person has pleaded guilty, the court shall stay entry of judgment of conviction and place the person in the pre-conviction forensic diversion program for not more than:

(1) two (2) years, if the person has been charged with a misdemeanor; or

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(2) three (3) years, if the person has been charged with a felony.
 (f) If, after considering the report of the forensic diversion program, the court determines that the person has:

- (1) failed to successfully participate in the forensic diversion program, or failed to successfully complete the program, the court shall lift its stay, enter judgment of conviction, and sentence the person accordingly; or
- (2) successfully completed the forensic diversion program, the court shall waive entry of the judgment of conviction and dismiss the charges.

SECTION 7. IC 11-12-3.7-12, AS AMENDED BY P.L.39-2006, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 12. (a) A person is eligible to participate in a post-conviction forensic diversion program only if the person meets the following criteria:

- (1) The person has a mental illness, ~~or~~ an addictive disorder, **or both a mental illness and an addictive disorder.**
- (2) The person has been convicted of an offense that is:
 - (A) not a violent offense; and
 - (B) not a drug dealing offense.
- (3) The person does not have a conviction for a violent offense in the previous ten (10) years.
- (4) The court has determined that the person is an appropriate candidate to participate in a post-conviction forensic diversion program.**
- (5) The person has been accepted into a post-conviction forensic diversion program.**

(b) If the person **meets the eligibility criteria described in subsection (a) and** has been convicted of an offense that may be suspended, the court ~~shall~~ **may**:

- (1) suspend all or a portion of the person's sentence;
- (2) place the person on probation for the suspended portion of the person's sentence; and
- (3) require as a condition of probation that the person successfully participate in and successfully complete the post-conviction forensic diversion program.

(c) If the person **meets the eligibility criteria described in subsection (a) and** has been convicted of an offense that is nonsuspendible, the court ~~shall~~ **may**:

- (1) order the execution of the nonsuspendible sentence; and
- (2) stay execution of all or part of the nonsuspendible portion of the sentence pending the person's successful participation in and

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successful completion of the post-conviction forensic diversion program.

The court shall treat the suspendible portion of a nonsuspendible sentence in accordance with subsection (b).

(d) The person may be required to participate in the post-conviction forensic diversion program for no more than:

(1) two (2) years, if the person has been charged with a misdemeanor; or

(2) three (3) years, if the person has been charged with a felony.

The time periods described in this section only limit the amount of time a person may spend in the forensic diversion program and do not limit the amount of time a person may be placed on probation.

(e) If, after considering the report of the forensic diversion program, the court determines that a person convicted of an offense that may be suspended has failed to successfully participate in the forensic diversion program, or has failed to successfully complete the program, the court may do any of the following:

(1) Revoke the person's probation.

(2) Order all or a portion of the person's suspended sentence to be executed.

(3) Modify the person's sentence.

(4) Order the person to serve all or a portion of the person's suspended sentence in:

(A) a work release program established by the department under IC 11-10-8 or IC 11-10-10; or

(B) a county work release program under IC 11-12-5.

(f) If, after considering the report of the forensic diversion program, the court determines that a person convicted of a nonsuspendible offense failed to successfully participate in the forensic diversion, or failed to successfully complete the program, the court may do any of the following:

(1) Lift its stay of execution of the nonsuspendible portion of the sentence and remand the person to the department.

(2) Order the person to serve all or a portion of the nonsuspendible portion of the sentence that is stayed in:

(A) a work release program established by the department under IC 11-10-8 or IC 11-10-10; or

(B) a county work release program under IC 11-12-5.

(3) Modify the person's sentence.

However, if the person failed to successfully participate in the forensic diversion program, or failed to successfully complete the program while serving the suspendible portion of a nonsuspendible sentence, the

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court may treat the suspendible portion of the sentence in accordance with subsection (e).

(g) If, after considering the report of the forensic diversion program, the court determines that a person convicted of a nonsuspendible offense has successfully completed the program, the court shall waive execution of the nonsuspendible portion of the person's sentence.

SECTION 8. IC 12-23-14-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 5. The court may agree to provide the services and facilities of a program for individuals referred from another court, a probation department, the department of correction, the Federal Bureau of Prisons, ~~or~~ the division, **the prosecuting attorney's office, or pretrial services.**

SECTION 9. IC 35-45-9-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 1. As used in this chapter, "criminal gang" means a group with at least ~~five (5)~~ **three (3)** members that specifically:

(1) either:

(A) promotes, sponsors, or assists in; or

(B) participates in; or

(2) requires as a condition of membership or continued membership;

the commission of a felony or an act that would be a felony if committed by an adult or the offense of battery (IC 35-42-2-1).

SECTION 10. IC 35-45-9-5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 5. **(a) Except as provided in subsection (b), an individual who knowingly or intentionally solicits, recruits, entices, or intimidates another individual to join a criminal gang commits criminal gang recruitment, a Class D felony.**

(b) The offense under subsection (a) is a Class C felony if:

(1) the solicitation, recruitment, enticement, or intimidation occurs within one thousand (1,000) feet of school property; or

(2) the individual who is solicited, recruited, enticed, or intimidated is less than eighteen (18) years of age.

SECTION 11. IC 35-45-9-6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 6. **In addition to any sentence or fine imposed on a criminal gang member for committing a felony or misdemeanor, the court shall order a criminal gang member convicted of a felony or misdemeanor to make restitution to the victim of the crime under IC 35-50-5-3.**

SECTION 12. IC 35-50-2-1.4, AS ADDED BY P.L.109-2006,

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SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 1.4. For purposes of section 15 of this chapter, "criminal gang" means a group with at least ~~five (5)~~ **three (3)** members that specifically:

(1) either:

(A) promotes, sponsors, or assists in; or

(B) participates in; or

(2) requires as a condition of membership or continued membership;

the commission of a felony or an act that would be a felony if committed by an adult or the offense of battery (IC 35-42-2-1).

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Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Governor of the State of Indiana

Date: _____ Time: _____

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